



Law Society
of Scotland

Consultation Response

SEPA Strategic Infrastructure (Transport and Utilities) Plan

February 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to Scottish Environment Protection Agency's (SEPA) consultation on the Strategic Infrastructure (Transport and Utilities) Sector Plan.¹ We have the following comments to put forward for consideration.

General comments

We welcome SEPA's sectoral approach to regulation. However, we note that the sector plans demonstrate a move away from the 'traditional approach' to regulation. This reflects a fundamental change to the way in which SEPA regulates and there requires to be clarity as to how it is intended that SEPA will alter current regulation and policy.

The traditional, rule-based approach is generally both measurable and transparent which enables SEPA to be accountable to the public in its approach to regulation and enforcement. There is a possibility that a new approach based on 'partnership working' with business to encourage improved environmental performance in this sector could result in less public engagement and visibility and affect SEPA's role as a regulator. It is important that the public is reassured that SEPA is no less likely to take enforcement action against those operating illegally in the sector while focusing on improving environmental performance.

We note the vision that strategic infrastructure is in place which "delivers net environmental gain"². While we recognise the direction of travel towards this concept elsewhere in the UK, we are not sure if this has been encapsulated in Scottish Government policy to date and if not, we wonder how SEPA's promotion of the

¹ <https://consultation.sepa.org.uk/sector-plan/strategic-infrastructure-transport-utilities/>

² Page 6.

concept will affect planning and environmental decisions generally in Scotland. More clarity is required on when this concept will be deployed.

We consider that there is scope for greater focus on mitigation of environmental effects and there are opportunities to incentivise businesses to take this approach. For example, infrastructure projects could be encouraged to use Construction and Environmental Management Plans and to work with the construction industry to develop best practice. It is important to recognise the need to balance habitat protection and the need for infrastructure.

Reference is also made in the vision to “a cultural change in the sector means the industry...places a high degree of value in the sustainability and impact of strategic infrastructure, and does not place such heavy weighting on the immediate financial cost”. Again, this seems to propose a change to approach that is generally driven by central government and if there is to be a change to the weighting of costs and benefits in decisions to consent or fund strategic infrastructure, much more detailed consultation and guidance will be required.

There are a number of aspects of the draft Plan which are particularly useful and would merit replication within other sector plans to lend greater clarity to how SEPA might pursue their aims – for example:

- the section setting out “What is SEPA’s regulatory role?” (although we note reference is made to the Water Services Regulation Authority (OFWAT) which has no jurisdiction in Scotland),
- the issues identified in figure 9, in particular, we note that knowledge and levels of information have not been recognised in other sector plans as a barrier to compliance achievement and beyond compliance opportunities,
- the table³ setting out examples of non-compliance issues where SEPA has direct regulatory authority, and
- specific actions as to how SEPA will address non-compliance⁴.

With regards to Figure 8 identifying key influences on the sector, we note that:

- Clients – we suggest that the absence of reference to airport operators and to Scottish Canals is an omission. As there are other private energy generators beyond those listed, we would suggest a generic reference is used instead,
- Supply Chain – we query why ferry companies are referred to but not other transport providers (either for project materials or end use) such as coastal shipping, rail freight operators and most prominently road hauliers. These are also end users along with airlines, port users, passenger rail operators and various forms of road user. The “contractor” aspect of the supply chain is missing. Likewise, there is no reference to professional services providers (for example lawyers as well as engineers),
- Competition – we question the purpose and meaning of this category. Competition to what and who?

³ Page 21.

⁴ Page 22.

- Business stakeholders – whether added to Consumer or NGO categories, we would suggest that separate from Trade Industry Bodies, there should be recognition of the wider business stakeholder community by, for example, inclusion of the Scottish Chambers of Commerce network, and
- ‘NGOs’ should also take account of the RSPB, separate from their involvement in Scottish Environment Link.

There are a number of matters within the draft Plan which would benefit from greater clarity and specification. For example, it is not clear how SEPA will encourage innovation⁵ or ensure the sector is resilient to climatic changes⁶.

As noted above, we consider the specification of actions which SEPA will take to fix compliance and help businesses to go beyond compliance is useful. However, the theme of our comments on other Sector Plans, noting the need for greater clarity on how SEPA plans to pursue their targets, does still apply to this document. For instance some of the actions that SEPA intend to take require greater specification, including: the meaning of the “enterprise model of collaborative decision-making”⁷; plans to streamline licensing for complex strategic infrastructure developments⁸; the development of new training for SEPA staff⁹; and the outcome for communities to have clear lines of communication to voice concerns and collaborate on solutions¹⁰, in particular whether this will go beyond current consultation legal obligations. In relation to the section on Control of construction impact¹¹, we note that utilising new enforcement measures is noted twice.

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⁵ Page 23.

⁶ Page 24.

⁷ Page 29.

⁸ Page 31.

⁹ Page 32.

¹⁰ Page 33.

¹¹ Page 31.